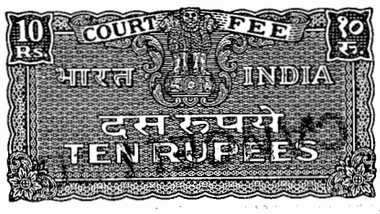
c. 8.10/- (1)

SINGLE BENCH



IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. NO. 4786 **/2005**

PETITIONER
PLAINTIFF

1. Smt. Jamuna Devi, W/o. Late Inder Singh Verma, aged about 61 years,
2. Madan Mohan Verma, S/o. Late Inder Singh Verma, aged about 43 years, Occupation Business\
3. Smt. Sarita D/o. Late Inder Singh Verma, W/o. Sahsikant Rohila aged about about 40 years, R/o. Delhi, Najaphgarh Delhi.
4. Pratap Kumar Verma, S/o. Late Inder Singh Verma, aged about 38 years, occupation business
5. Rajkumar Verma, S/o. Late Inder Singh Verma, aged about 36

No. 1,2,4 and 5 are R/o. Kotra Road, Sharma Colony, Raigarh, Tahsil & District Raigarh (C.G.)

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VERSUS

RESPONDENTS
DEFENDANTS

1. Suresh Kumar Agrawal, S/o. Santlal Agrawal, aged abut 51 years, R/o. Kotra Road, Raigarh.
2. State of Chhattisgarh, Through Collector, Raigarh. Chhattisgarh.

WRIT PETITIONER UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS, PROHIBITION, CERTIORARI ETC. OR ANY OTHER DIRECTION OR ORDER TO DO JUSTICE IN THE MATTER

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No.4786 **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

05.10.2005

Shri Sunil Otwani, counsel for the petitioners.

Shri U.K. Singh Chandel, Panel Lawyer for the State on advance copy.

I.A.No.8515/2005

This is an application for urgent hearing. The matter is taken up on Board. This interim application is disposed of.

W.P.No.4786/2005

The petitioners, who are plaintiffs before the trial Court, have filed this writ petition challenging the action of the trial Court by which the trial Court accepted the written statement filed by the defendant on 09.3.2005. Learned counsel for the petitioners submits that the defendant had caused his appearance before the trial Court on 24.4.2002. He further submits that a reply to the injunction application was filed by him on 18.10.2004 and subsequently, after so many dates, written statement was filed on 09.3.2005. Learned counsel submits that no application for permission to file written statement at a belated stage was filed by the defendant and the lower Court was not justified in directly accepting the written statement on 09.3.2005. He submits that the aforesaid acceptance of the written statement by the court below was against the provisions of Order VIII Rule 1 of C.P.C. He further submits that according to this provision, the written statement must have been filed within 30 days from the date of service of summons on the defendants and at the most he should

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आदेश पत्रक (पूर्वानुबद्ध)

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have been allowed to file written statement to an outer limit of 90 days only and thereafter the written statement filed by the defendants should not have been accepted.

Learned counsel draws the attention of this court towards the provisions of the Order VIII Rule 1 of C.P.C.

Learned counsel also draws my attention towards the order sheets of the trial Court and submits that in none of the order sheets in between 24.4.2002 to 09.3.2005 (i.e., after causing appearance and before filing written statement) the trial Court granted time to the defendant to file his written statement by recording reasons either in the first instance or at any subsequent instance after 24.4.2002 and prior to 09.3.2005 in terms of Order VIII Rule 1 of C.P.C.

The Apex Court in the matter of ***Kailash –Vs Nanhku and others reported in 2005 AIR SCW 2346*** has held that "the time schedule provided by order VIII Rule 1 of C.P.C.,for filing the written statement is directory and not mandatory. The purpose of providing time schedule for filing the written statement under Order VIII Rule 1 of C.P.C. is to expedite and not to scuttle the hearing. The provisions spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 of Order VIII of C.P.C. is couched in negative form, it does not specify any penal consequence flowing from the non compliance. The provision being in the domain of the procedural law it has to be held

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मामला क्रमांक W.P. No. 4786 **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

directory and not mandatory. The power of the Court to extend time for filing written statement beyond the time schedule provided by Order VIII, Rule 1 of C.P.C. is not completely taken away."

It appears that the plaintiffs have not filed any such objection before the trial Court and have directly approached this Court after the written statement was accepted. In the facts and circumstances of the case when the plaintiffs are raising this point for the first time before this Court, I deem it proper that the objection should be dealt with by the trial Court firstly. The plaintiffs, if so advised, may raise their objection before the trial Court and if such an objection is raised, the trial Court shall dispose of the same at the earliest possible date and shall pass a speaking order in accordance with law.

With the aforesaid observations, this petition stands disposed of at the motion stage itself.

Consequently, M.W.P.No.3869/2005 also stands disposed of.

Sd/-
Sunil Kumar Sinha
Judge